

17

CITY COUNCIL AGENDA ITEM**CITY OF BILLINGS, MONTANA****Monday, SEPT. 22, 2008****SUBJECT:** Approval of Development Agreement for Babcock Building**DEPARTMENT:** City Administrator's Office/Legal**PRESENTED BY:****PROBLEM/ISSUE STATEMENT:** The City Council is being asked to enter into a Development Agreement with the _____ and _____**PROCEDURAL HISTORY:**

- Nov. 13, 2007: Council approves a resolution conditions under which the 1976 Downtown TIFD would sunset and approved a _____
- Feb. 25, 2008: Council approves a resolution amending the 2007 development agreement that includes _____ to manage legacy projects under the Large Project Gap Funding Program.
- Aug. 29, 2008 _____ for a \$1.9 million allocation of TIFD funds to purchase and renovate the Babcock Building, and forwards the item to the City Council for approval.

The Babcock, LLC, consists of Mike Mathew, _____ and architects _____ (a third pair of partners has left the project). They have a buy-sell agreement to purchase the building that expires on Sept. 25, 2008.

Board of Directors - Downtown Billings Partnership

Don Olsen Vice President

Chair of Exec. Comm. Urban Design Committee

dono@o2architects.net • 259-7123**Kim Olsen**kmo@o2architects.net - 259-7123**Kay Foster**kayf@montana.net - 256-2333**Tina Volek**tvolek2@dcbillings.mt.us - 657-8430

Board & Commission Reports-Downtown Billings Partnership

Greg Kruger, Executive Director of the DBP gave the 2nd quarter report for the partnership. The DBP jointly manages and invest the incremental taxes from the downtown district into additional downtown projects.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM
CITY OF BILLINGS, MONTANA
Tuesday, October 10, 2006

TITLE: Public Hearing and First Reading Ordinance for the Expanded N. 27th Street Urban Renewal District

DEPARTMENT: Administration

PRESENTED BY: Bruce McCandless, Deputy City Administrator

PROBLEM/ISSUE STATEMENT: The Council will consider adopting an ordinance that removes property from the existing downtown urban renewal and tax increment district and adds it to the existing N. 27th Street Urban Renewal District. On September 25 the Council adopted a resolution of intent to create the district, which included a description of the property and the blighted conditions and set a public hearing for this date. The next step is to adopt this ordinance that creates the expanded district. It is important that the district be expanded this calendar year in order to take advantage of the relatively low base taxable value. Taxable value in the proposed district is expected to increase next year because a number of properties have changed ownership and property investments will occur that will increase the taxable value, which creates the increment that will be important for financing future public improvements.

ALTERNATIVES ANALYZED: Creating this district is discretionary. The City Council may:

- approve the ordinance
- modify the proposed boundary
- not approve the ordinance

FINANCIAL IMPACT: The financial impact is unknown. However, the taxable market value is approximately \$22 million and includes a lot of public and tax exempt property. The purpose of an urban renewal and tax increment district is for the public to invest in infrastructure and thereby encourage private investment that increases the taxable value. Without the public investment, it is assumed that the private investment would not occur, thus there is no "loss" of taxes from freezing the taxable value base because all taxing entities continue to collect taxes on the base value.

AGENDA ITEM:



CITY COUNCIL AGENDA ITEM

CITY OF BILLINGS, MONTANA

 Monday, November 24, 2008

TITLE: Public Hearing and Ordinance Adopting the Expanded N. 27th Street Urban Renewal Area - 2008
 DEPARTMENT: Administration
 PRESENTED BY: Bruce McCandless, Asst. City Administrator

PROBLEM/ISSUE STATEMENT: The Council will conduct a public hearing and consider adopting an Ordinance that adopts the Modified Plan and establishes the Expanded N. 27th Street Urban Renewal Area (District) - 2008. It is important that the district be expanded this calendar year in order to take advantage of the property improvements that have taken place in 2008 and the resulting higher taxable value. It is that increase in taxable value that produces the tax increment that is needed to complete the public improvement projects anticipated by the modified plan. The Council must act at this meeting because, in order to comply with new Department of Revenue (DOR) Rules, the expansion and all documentation must be reported and submitted to the DOR by February 1, 2009.

ALTERNATIVES ANALYZED: Expanding this district is discretionary. The City Council may:

- adopt the ordinance that approves the Modified Plan and expands the boundaries of the Extended N. 27th Street District
- modify the ordinance and proposed boundary
- not approve the ordinance and allow the Extended N. 27th Street District that was established in 2006 to remain in place.

FINANCIAL IMPACT: The financial impact is unknown. However, the taxable value is approximately \$3.5 million. All of the expansion area was in the 1976 Downtown Urban Renewal Area that expired in March, 2008 but the expansion area does not include all of the property that was in that earlier downtown district. The purpose of an urban renewal and tax increment district is for the city to invest in infrastructure and thereby encourage private investment that increases the taxable value. Without the public investment, it is assumed that the private investment would not occur and property values would stagnate or decline.

RECOMMENDATION

ATTACHMENT 3

**EXPANSION OF THE BILLINGS, MONTANA
NORTH 27TH STREET URBAN RENEWAL
AREA, WITH TAX INCREMENT, AND
AMENDMENT TO THE URBAN RENEWAL
PLAN**

**FOR CITY OF BILLINGS AND PLANNING REVIEW
October 14, 2008**

Prepared by



Downtown Billings Partnership, Inc
2815 2nd Ave. North – Billings, MT 59101 – www.downtownbillings.com

AGENDA

COUNCIL CHAMBERS September 10, 2007 6:30 P.M.

CALL TO ORDER – Mayor Tussing

PLEDGE OF ALLEGIANCE – Mayor Tussing

INVOCATION – Councilmember Gaghen

ROLL CALL

MINUTES – August 27, 2007

COURTESIES

PROCLAMATIONS

ADMINISTRATOR REPORTS – Tina Volek

6. DEVELOPMENT AGREEMENT between the City of Billings and Foursquare Properties for amended plat of Lot 2A of amended Lots 2, 3, 4, and 5, Block 1, Miller Crossing Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

6. DEVELOPMENT AGREEMENT between the City of Billings and Foursquare Properties for amended plat of Lot 2A of amended Lots 2, 3, 4, and 5, Block 1, Miller Crossing Subdivision. Staff recommends approval. (Action: approval or disapproval of staff recommendation.) Public Works Director Dave Mumford advised the Development Agreement was a standard agreement with the exception of one item; he said if the Council approved a TIFD for the area in November, it would help offset some of the off-site public improvements that were part of the agreement.

Councilmember Ronquillo asked if there would be a couple more public meetings. Mr. Mumford said the TIFD would have its own public meetings. Planning Director Candi Beaudry advised the first meeting was scheduled for Thursday, September 13th, at Ponderosa School, and said the Council should have received an invitation. The councilmembers said they had not received an invitation, so Ms. Beaudry said she would e-mail each of them the information.

Councilmember Ronquillo moved for approval of Item #6, seconded by Councilmember Gaghen. On a voice vote, the motion was unanimously approved.

7-15-4258. Acquisition and administration of real and personal property. (1) A municipality may:

(4) A municipality may not acquire real property for an urban renewal project or enter into a development agreement, as provided in subsection (1)(e), unless the local governing body has approved the urban renewal project plan in accordance with 7-15-4216(2) and 7-15-4217.

(e) enter into a development agreement with the owner of real property within an urban renewal area and undertake activities, including the acquisition, removal, or demolition of structures, improvements, or personal property located on the real property, to prepare the property for redevelopment.

would continue to grow close to the 80-90% range with a standard SID.

Councilmember Veis asked if TIF District funds had been used in the past to refund an SID. Mr. McCandless stated he was not familiar with that but knew that in the downtown area, Park I was built by a Parking Commission that issued bonds for the construction of the garage and he thought the tax increment district that came into effect in 1978 refunded those bonds, but he did not believe they were SID bonds. Councilmember Veis asked if any research was done on the City's ability to use TIF funds to refund an SID. Mr. McCandless responded that he did not conduct any personal research, but had been guided all along by Bond Counsel Mae Nan Ellingson, with Dorsey Whitney, who was the foremost expert in the state on any kind of bonding and was one of the authors of the development agreement so she was aware of the proposed SID.

Mayor Tussing asked about a sidewalk and trail going to the nearby school. Mr. Mumford explained that a sidewalk would be in place on the north side of the street and south of the ditch there would be a 10 foot paved asphalt trail for walking/biking from South Billings Boulevard part of the way, then sidewalks all the way to Orchard. He said it was in the County from there.

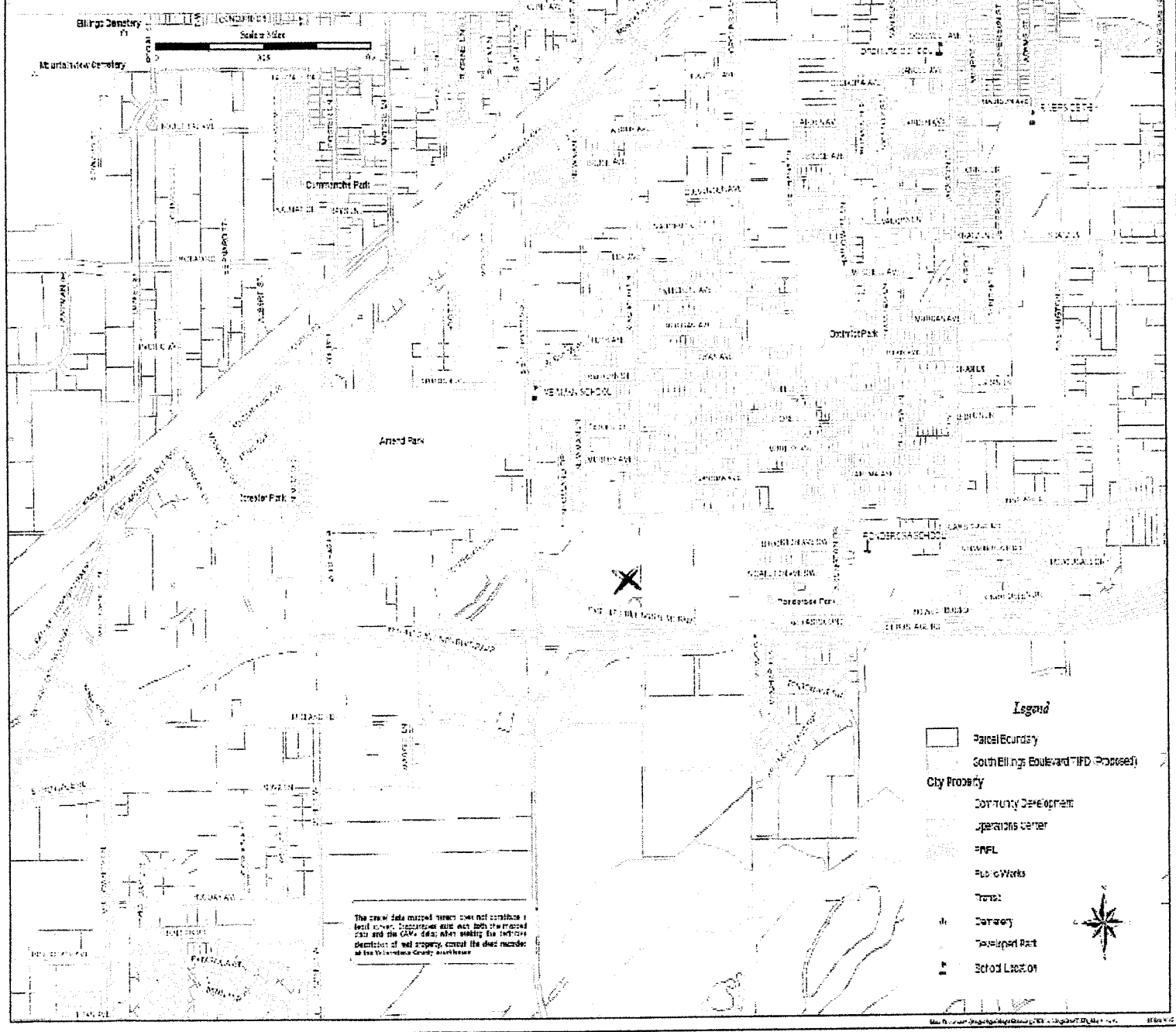
Councilmember Ulledalen asked for a further comparison/contrast with the proposed project and what was done on King Avenue West. Mr. Mumford said the two projects were similar in that it was significant development on a road that was substandard and could not handle the traffic. He said the differences were that the King Avenue West project was a standard SID with a few property owners and the City paid for the three lanes and the center, the asphalt that was there, and the water and sewer was expanded. He added that the King Avenue East project involved costs for the developer for on-site improvements. He said both projects were on large, undeveloped parcels of raw land. He said the King Avenue West project was accelerated by the developers who funded the design ahead of time. He said the City fronted that for the King Avenue East project and both the design, acquisition of the property and some of the lead items were taken care of by the City. He said the intention of the agreement was for the TIF to pay the King Avenue East project back so the City would be made whole. He noted that Public Works could not fund those large projects on its own and borrowed against Solid Waste reserves to fund the King Avenue West project which impacted the ability to build arterials. He said the reality was that with both projects, they tried to be innovative to build the needed roads with limited resources. He noted the 57.5% contribution was not a gamble. He said the reimbursement was not made until there was proof that 100% of the payment was made. He said the development agreement required the three property owners to make the payment, and then the City reimbursed its 57.5% 10 days later.

Councilmember Ronquillo said there was a little confusion with three controlled intersections at South Billings Boulevard, Orchard and Calhoun. He asked what would happen if a roundabout was put at one. Mr. Mumford responded that there would be a signal at Calhoun and the intersection at South Billings Boulevard would be enlarged, and a roundabout would be difficult because the area was not large enough and it would involve covering the City-County drain which would be cost prohibitive.

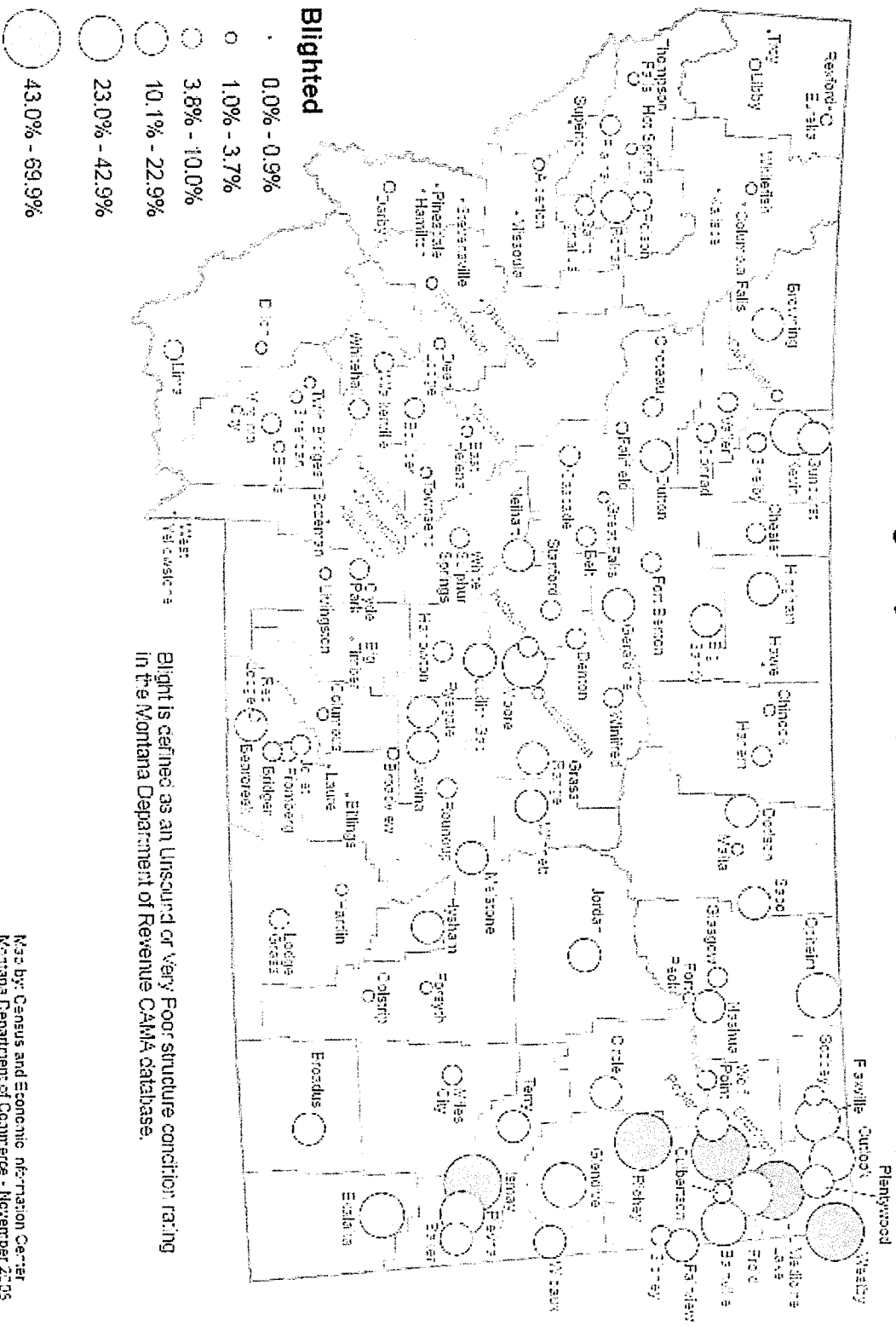
Councilmember Gaghen moved for approval of SID 1385 King Avenue East and the resolution that created the district, seconded by Councilmember Ruegamer.

Councilmember Ruegamer said he could say with candor that he always put the taxpayers first and the risk of any venture concerned him. He said he felt staff did a great

South Billings Blvd Proposed TIFD



Residential Blight by Municipality: Montana



Source: Montana Department of Revenue, 2005 CAMA Data

MT Department of Commerce

42.10.0000 NEW URBAN RENEWAL TAX INCREMENT FINANCING DISTRICTS –
INFORMATION REQUIRED TO ENABLE THE DEPARTMENT TO CERTIFY BASE TAXABLE VALUE

(1) The department will certify the base taxable value of a newly created urban renewal TIFD if the department determines that the following information exists and has been provided to the department:

- (b) a copy of the resolution of necessity required by 7-15-4210, MCA, adopting the statement of blight. The resolution must have an effective date prior to the date on which the TIFD is created;
- (c) a map representing the TIFD's boundary including a legal description of the TIFD;
- (d) a copy of the local government's growth policy;
- (e) a copy of the local government's urban renewal plan pursuant to 7-15-4212 and 7-15-4284, MCA, containing the tax increment provision;
- (f) a copy of the local government's planning board's finding that the urban renewal plan conforms with the local government's growth policy;
- (g) a copy of the notice of public hearing required under 7-15-4215, MCA;
- (h) a certified copy of the ordinance approving the urban renewal plan containing the tax increment provision under 7-15-4216, MCA;
- (i) a certified copy of the ordinance creating the urban renewal district including the tax increment provision;
- (j) the name of the TIFD; and
- (k) a list of the geocodes for all real property, the assessor codes for all personal property, and a description of all centrally assessed property located within the TIFD at the time of its creation.

(2) The local government that has created the TIFD will provide the information described in (1) to the department when it notifies the department that the TIFD has been created.

History: 15-1-201, MCA; IMP, 7-15-4202, 7-15-4210, 7-15-4215, 7-15-4216, 7-15-4202, 7-15-4284, MCA; NEW, 2008 MAR p. 1490, Eff. 7/18/08.



Dan Bucks
Director

Montana Department of Revenue



Brian Schweitzer
Governor

October 27, 2008

Kevin Nelson
PO Box 23107
Billings, MT 59104

Dear Mr. Nelson:

The Department of Revenue has received your letter of September 29, 2008. Your request for due process participation in the Department's consideration of whether a Tax Increment Finance District (TIFD) will receive a determination of original, actual and incremental taxable values pursuant to MCA Section 7-15-4285 is denied.

There is no statutory provision for a public hearing on the Department's determination. In general, a taxpayer has no standing to challenge and no due process right to participate in the functions of the executive branch over issues which affect the taxpayer in a manner indistinguishable from all other taxpayers. See *Hein v. Freedom from Religion* 551 U.S. ___ (2007); *Flast v. Cohen*, 392 U.S. 83 (1968)); and *Bi-Metallic Investment Co. v. State Board of Equalization*, 239 U.S. 441 (1915).

The reason for not holding a public hearing is that the Department's discretion in TIFD administration is to verify that the local government has met the legal "checklist" for creating the TIFD so that the Department may certify the base value of the TIFD. Beyond that, the Department has not been given the legal authority to evaluate the policy judgments of the local government in this matter.

The substantive policy decisions for a TIFD are solely at the discretion of the local government, in this case the City of Billings, so that if a citizen is not satisfied with that decision then your alternative is to participate in the local government processes that lead to the creation of the TIFD and/or to sue to block the TIFD in your local district court if there are procedural or substantive failings in the local government process.

Sincerely,

Dan Bucks
Director
PO Box 5805
Helena, MT 59604-5805

CC: Christina Volek, Billings City Administrator

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

TO: Executive Branch Officers
Department Directors
Chairs and other Presiding Officers of All Executive Branch Boards,
Bureaus, Commissions, Departments, Authorities, and Agencies

FROM: Governor Brian Schweitzer

DATE: October 28, 2008

RE: Public participation in agency decisions pursuant to MCA § 2-3-103

Montana's public participation laws require me, as Governor, "to ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state" adopts rules, setting forth policies and procedures to facilitate public participation in agency programs and decisions. MCA § 2-3-103(2). I wrote you in 2005, 2006, and 2007 to remind you of these statutory obligations for your agency, and I again take this opportunity to remind you of these requirements.

Montanans have a constitutional right to participate in the activities of their government. The "Right of Participation" is found at Article II, section 8 of the Montana Constitution, which provides:

The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

This important constitutional right is implemented by Montana statutes, which require every agency, as defined in MCA § 2-3-102(1), to "develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public." MCA § 2-3-103(1); see also MCA Title 2, chapter 3, part 1 in its entirety. The statutes require agencies to provide adequate notice to the public and assist public participation. Meeting agendas must include an item allowing public comment on any public matter not on the agenda but within the agency's jurisdiction. The agency may not act on any matter that was not included on the agenda and for which public comment on the matter was not allowed. Public comments must be incorporated into the official minutes of the meeting. The district courts may set aside agency decisions not in

FOR SALE

Controlled Industrial Zoning

All City Services Included

Lots Starting at \$4.25+ Per Sq. Ft.



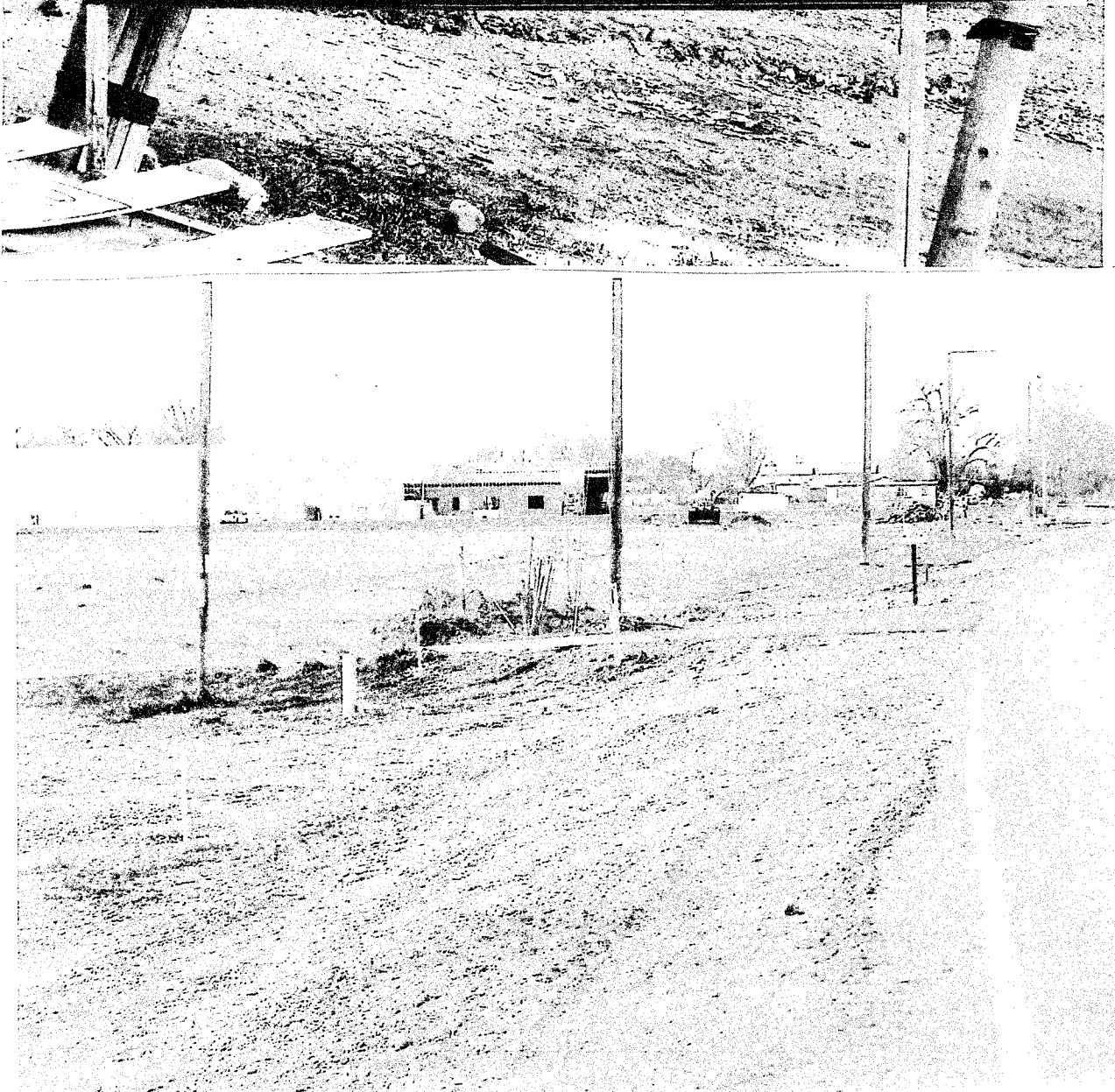
**FIRST CHOICE
REAL ESTATE**

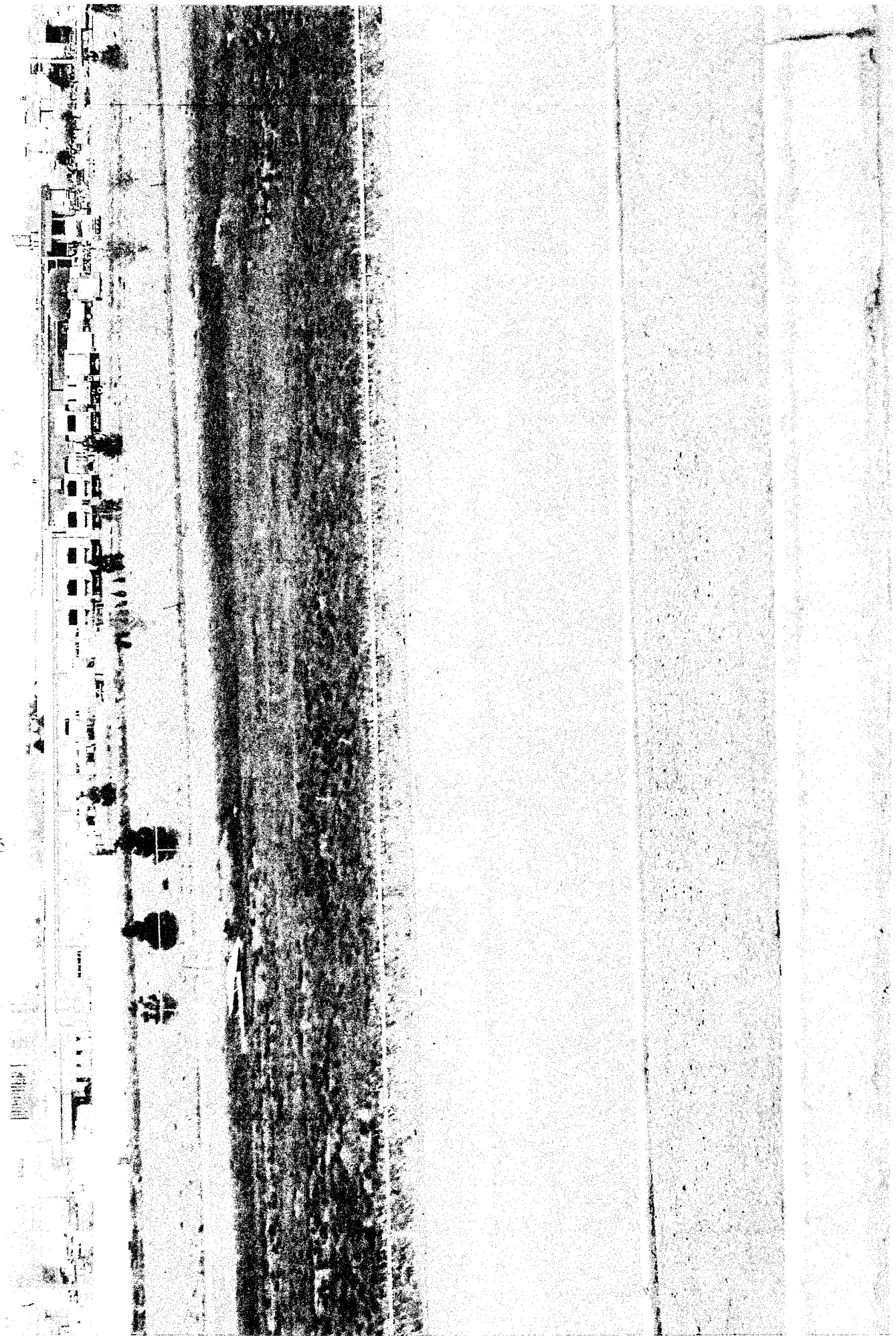
Broker-Owner

Rick Dorn 861-1002

Sam Rankin 855-3013

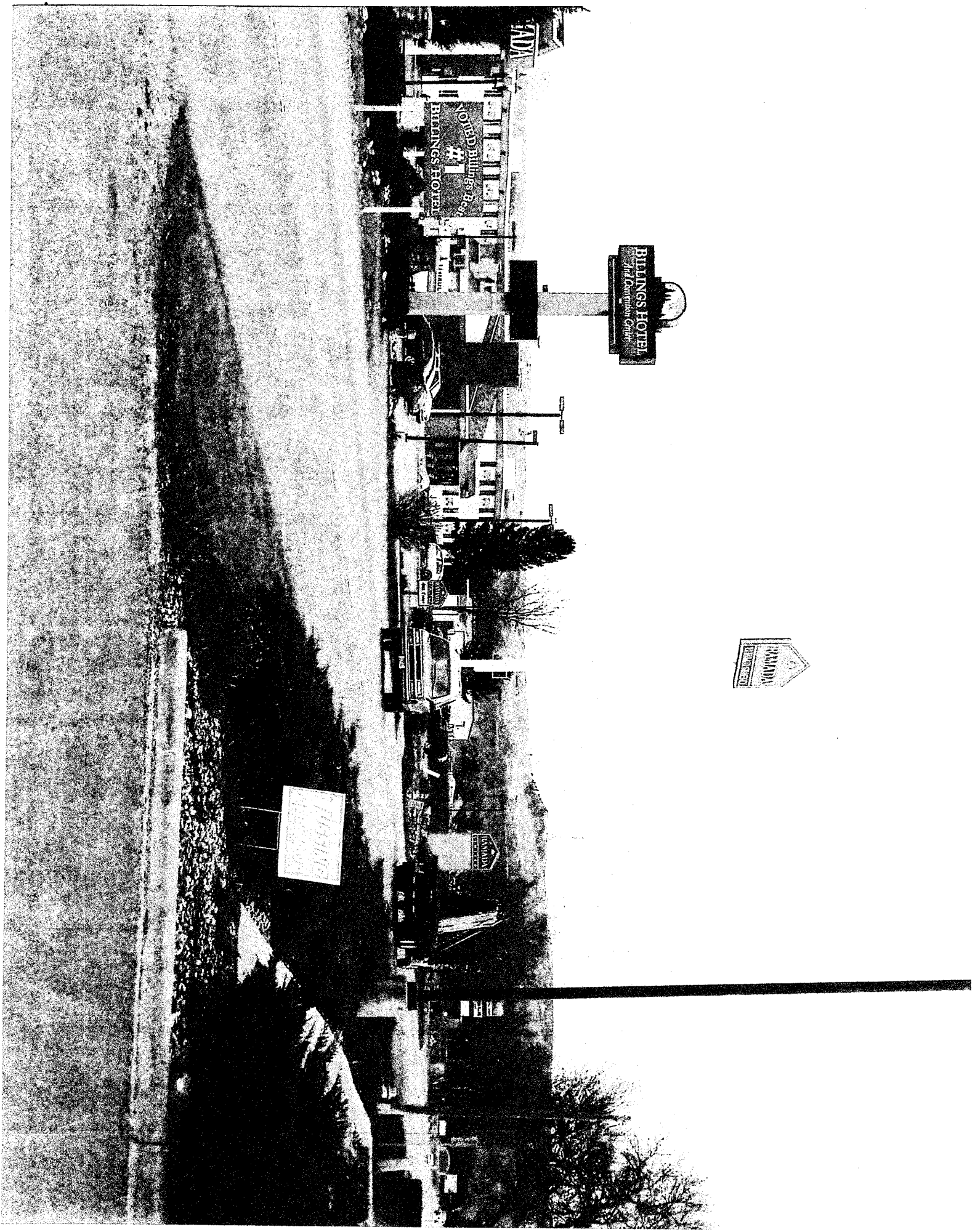
Hannah Elletson 670-0739

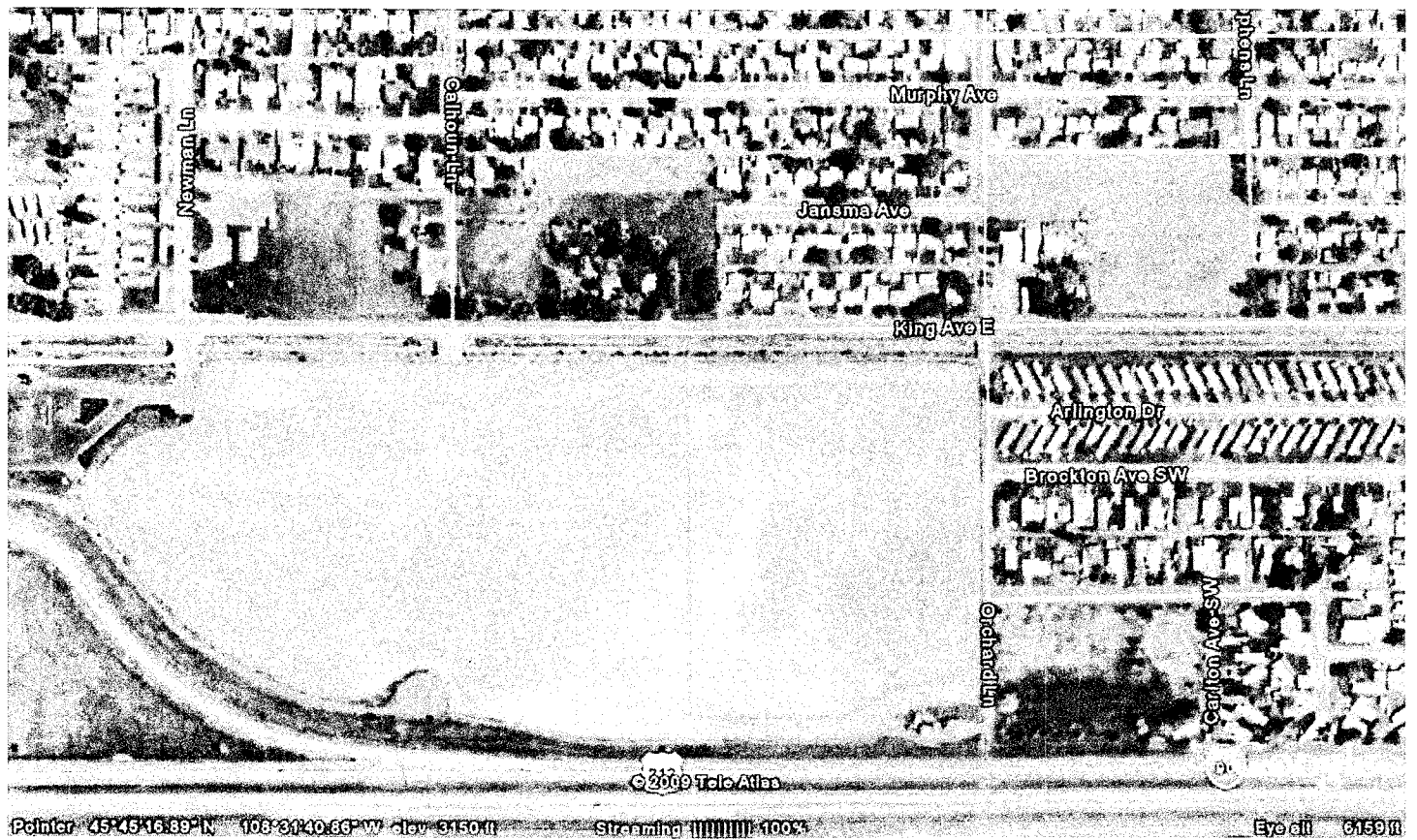












Section 12. Strict accountability. The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.